Day Automotive Resources, Inc., d/b/a Day Automotive Group and Centennial Chevrolet, Inc., A Single Employer *and* United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 13836-03, AFL–CIO, CLC.
Cases 6–CA–34843 and 6–CA–34895

December 15, 2006

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND WALSH

On June 9, 2006, Administrative Law Judge Richard A. Scully issued the attached decision. Both the Respondent and the General Counsel filed exceptions and supporting briefs.[1] The General Counsel filed an answering brief in opposition to the Respondent's exceptions, to which the Respondent filed a reply brief. The Respondent filed an answering brief to the General Counsel's exceptions, to which the General Counsel filed a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions[3] and to adopt the recommended Order as modified.[4]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Day Automotive Resources, Inc., d/b/a Day Automotive Group and Centennial Chevrolet, Inc., Uniontown, Pennsylvania, and Monroeville, Pennsylvania, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 2(a).

"(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

> Employees at the facility operated by Centennial Chevrolet, Inc., Uniontown, Pennsylvania, only and at no other location. The term "employee" shall mean only those employees in the actual maintenance, repair or rebuilding of any vehicle, but not including bookkeepers, office force, supervisors, managers, salesmen, car washer, detailers, lot boys or janitors."

2. Add the following as paragraph 2(d) and reletter the subsequent paragraph.

"(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amounts due under the terms of this Order."

3. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

---

[1] The Respondent filed a request for oral argument. The request is denied as the record, exceptions, and briefs adequately present the issues and positions of the parties.

[2] Both the General Counsel and the Respondent have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[3] Chairman Battista concurs with his colleagues that the Respondent violated Sec. 8(a)(5) and (1) of the Act by adamantly insisting upon the Union's acceptance of its healthcare proposal. Here, the Respondent admits in its brief on exceptions to the Board that it "was adamant and unmovable about moving the 14 bargaining unit employees into the same plan as the other 500 Day employees." Moreover, at the hearing, Respondent's chief negotiator Richard Thomas conceded that "from the onset [the Respondent] took the position that the Union had to accept the healthcare plan that had already been implemented for the other nonunit employees; the plan coverage was absolute, and that the [Respondent] never gave the Union any opportunity to bargain over coverage, because the unit employees had to take the same benefits; pay the same two-thirds portion of the premium like everyone else." Although Chairman Battista finds that the Respondent's position (that all its employees should have the same healthcare plan) was reasonable and practical, he further finds that, by adamantly refusing to consider the Union's alternative healthcare proposals, the Respondent did not honor its obligation to bargain in good faith. See *Regency Service Carts, Inc*., 345 NLRB 671, 676 (2005) (finding that "the totality of the employer's conduct throughout the negotiations," demonstrates that it unlawfully endeavored to frustrate the possibility of arriving at any agreement with the union).

[4] We shall modify the judge's recommended Order to add the unit description to the bargaining order, and to add the Board's standard records preservation provision.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment by conditioning negotiations for a collective-bargaining agreement on the Union's acceptance of our proposal for a new health care plan.

WE WILL NOT unilaterally change terms and conditions of employment by implementing our last contract offer prior to reaching a good-faith impasse in bargaining.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union as the exclusive representative of our employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, WE WILL embody the understanding in a signed agreement.

Employees at the facility operated by Centennial Chevrolet, Inc., Uniontown, Pennsylvania, only and at no other location. The term "employee" shall mean only those employees in the actual maintenance, repair or rebuilding of any vehicle, but not including bookkeepers, office force, supervisors, managers, salesmen, car washer, detailers, lot boys or janitors.

WE WILL, on request of the Union, restore to unit employees the terms and conditions of employment that were applicable prior to August 31, 2005, and continue them in effect until the parties either reach an agreement or a good-faith impasse in bargaining and WE WILL make them whole for any losses suffered by reason of the unlawful unilateral changes in terms and conditions of employment, on and after August 31, 2005, plus interest.

DAY AUTOMOTIVE RESOURCES, INC., D/B/A DAY AUTOMOTIVE GROUP AND CENTENNIAL CHEVROLET, INC.

Julie R. Stern, Esq., for the General Counsel.
James P. Thomas, Esq. and *Richard I. Thomas, Esq.,* of Pittsburgh, PA, for the Respondent.

DECISION

STATEMENT OF THE CASE

RICHARD A. SCULLY, Administrative Law Judge. Upon charges filed by United Steel. Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 13836-03, AFL–CIO, CLC (the Union) the Regional Director, Region 6, National Labor Relations Board (the Board), issued a consolidated complaint on January 9, and an amended consolidated complaint on February 16, 2006, alleging that the Respondent, Day Automotive Resources, Inc., d/b/a Day Automotive Group and Centennial Chevrolet, Inc., a single employer, had committed certain violations of Section 8(a)(5) and (1) of the National Labor Relations Act, as amended (the Act). [1] The Respondent filed timely answers denying that it had committed any violations of the Act.

A hearing was held in Pittsburgh, Pennsylvania, on March 7, 8, and 9, 2006, at which all parties were given a full opportunity to examine and cross-examine witnesses and to present other evidence and argument. Briefs submitted on behalf of the parties have been given due consideration.[2] Upon the entire record, and from my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

At all material times Centennial Chevrolet, Inc. (Centennial) has been a Pennsylvania corporation with an office and place of business in Uniontown, Pennsylvania, where it has engaged in the repair and retail sale of automobiles and related products. At all material times Day Automotive Resources, Inc. (Day) has been a Pennsylvania corporation with an office and place of business in Monroeville, Pennsylvania, and has owned subsidiary corporations which have facilities throughout Western Pennsylvania where they have engaged in the repair and retail sale of automobiles and related products. During the 12-month period ending July 31, 2005, Centennial in the conduct of its business operations derived gross revenues in excess of $500,000 and purchased and received at its Uniontown, Pennsylvania, facility goods valued in excess of $50,000 directly from points outside the Commonwealth of Pennsylvania. During the 12-month period ending July 31, 2005, Day in the conduct of its business operations derived gross revenues in excess of $500,000. The parties have stipulated, for purposes of this proceeding only, that Centennial and Day shall be considered a "single employer" and a "single integrated enterprise" sharing common ownership, common management, centralized control of labor relations and inter-relation of operations. The Respondent admits, and I find, that all material times it has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

Since prior to July 1989, when the current ownership acquired Centennial, the Union has represented the employees in a bargaining unit consisting of auto mechanics and body shop

[1] The charge in Case 6–CA–34843 was filed on September 6, 2005 and amended charges were filed on September 21 and December 16, 2005 and February 13, 2006. The charge in Case 6–CA–34895 was filed on October 3, 2005 and an amended charge was filed on February 13, 2006.

[2] The General Counsel's unopposed motion to correct certain errors in the hearing transcript is granted.

technicians. At the time of the 1989 acquisition, the bargaining unit employees were on strike. The new ownership subsequently negotiated a 5-year collective-bargaining agreement and the employees returned to work. In 1994 and 2000, new 5-year agreements were negotiated. The parties agreed to extend that agreement which was to expire on June 30, 2005, during negotiations for a new contract. There are currently approximately 14 employees in the unit. They are the only union-represented employees among the approximately 44 employees at Centennial and the approximately 500 employed by the Respondent and its subsidiaries.

For many years the Respondent had provided health insurance to its union and nonunion employees through two separate Blue Cross/Blue Shield (BC/BS) plans referred to as the "Highmark" plans. During the spring of 2005, the Respondent decided not to renew the Highmark plans and to replace them with one plan covering all its employees to be provided by Great West Healthcare.

By letter dated March 18, 2005,[3] the Union requested that the Respondent begin negotiations for a new contract to succeed the agreement that was to expire on June 30. By letter dated April 22, the Respondent's attorney Henry Beamer informed the Union that it was prepared to schedule a meeting within 15 days to begin negotiations. Union representative Ralph E. Lippart, who has been assigned to represent the bargaining unit since 2002, testified that a few days after receiving Beamer's letter he called to ask him about scheduling dates for negotiations. Beamer responded that he was meeting with the Employer to prepare its proposal and he would get back to Lippart with dates. By letter dated May 11, Beamer stated that he was working on a proposed agreement and asked if Lippart had anything he wished to submit. Lippart responded by letter dated May 19 in which he proposed meeting on May 24, 25, 26, or 31. However, Lippart's letter was returned to him. He then faxed a copy to Beamer who responded by letter dated May 26 stating that he would be in touch about a meeting date shortly. Within a week, Lippart called Beamer and left a message about the need to schedule meeting dates. By mid-June the Respondent had engaged the services of Richard Thomas to serve as its chief negotiator. On June 15, Thomas left a message for Lippart to call him but his call was not returned. Thomas called again on Monday, June 20 and was told that Lippart was on vacation and would not return to the office until the following week. Thomas sent Lippart a letter, dated June 22, introducing himself and asking Lippart to call when he returned from vacation. Lippart called Thomas on June 27 and they agreed to meet on June 30.

The first bargaining session was held on June 30, the day the existing agreement was to expire, at the Centennial dealership. The Union was represented by Lippart, who served as chief spokesperson, Unit President Robert Bernot, Grievance Committeeman Gerald Rogers and unit member Bill Lewis. The Respondent was represented by Thomas, Chief Financial Officer Carl Prince, and Centennial Manager Robert Waltz. The Employer did not make any contract proposal at this session. The Union presented a written list of proposals, including its economic proposal. It was agreed that discussion of economic proposals would be deferred until noneconomic issues were resolved. They discussed and agreed to extend the expiring agreement pending negotiations and signed a written extension agreement that could be terminated by either party after 48 hours notice. Thomas told Lippart that health care was going to be the "driving subject" in their negotiations and that there were health care issues that had to be dealt with. One of the employees asked if their health insurance coverage would be extended and Prince stated that the Highmark plan would be extended during bargaining.

About 2 or 3 hours after the session ended, Prince came to Bernot and Rogers in their work area and told them that Blue Cross would not extend coverage on the small group in the unit and that if they needed coverage they would have to sign up that day for a Great West plan that would duplicate the Highmark plan. Prince repeated this to the unit employees and told them that there were forms to sign up for what was to be referred to as the "interim plan" in the office. By letter dated July 6, Prince informed the Union that Highmark would not continue coverage after June 30, that it had obtained a policy from Great West to cover unit employees which would mirror the Highmark coverage as closely as possible, and that the Employer would pay any additional costs that might result. This interim plan was subject to termination on the same terms as the contract extension agreement.

The next bargaining session was on July 7. The Respondent presented a written proposal which included a provision that would move unit employees to a new health care plan which would require them to pay two-thirds of the applicable premium and another eliminating the 40-hour pay guarantee that had been in effect for many years.[4] Thomas stated that it was absolutely essential that all the Respondent's employees including those in the bargaining unit be covered by the same health care plan, which was that provided by Great West.

The initial premium would be based on the experience under the previous Highmark plan and after that on the yearly experience. Lippart asked for copies of the Great West plan and cost information so that the Union committee could evaluate the plan. He was told that the information would be provided.

The next meeting was on July 13. The Employer presented a proposal which responded to some of the Union's proposals and the parties agreed to the language on several proposals. With respect to health care, the Employer gave the Union two sheets, one comparing the cost of the proposed Great West plan with the expiring Highmark plan and the other a "benefits grid" which contained a summary of medical benefits under the Great West plan. Lippart told the Employer that the documents did not provide the information he needed and that he could not bargain a new healthcare plan until he knew what the plan was. He asked for copies of a "plan document" that "outlines all the coverages and the exceptions, and how the plan works." He

[3] Hereinafter, all dates are in 2005.

[4] Under the 40-hour guarantee employees who were present at work for their scheduled 40 hours were paid for those 40 hours even if they did not actually perform work during all of those hours or if the total of the flat rates applicable to the jobs they performed did not add up to 40 hours.

was told that he could go to the Great West website and look up the information or talk to Ken Hoggay the broker handling the health insurance matter. Lippart credibly testified that he told Thomas that he could not bargain about health care plan by itself, that it had to be considered with other economic issues such as the proposed elimination of the 40-hour guarantee. Thomas responded that he would not discuss the economics until health care was settled. There was a discussion concerning the 40-hour guarantee and Bernot commented that the employees would "stand on the road for the 40-hour guarantee." Thomas responded that it was something they could talk about and asked for the Union's counterproposal on the issue. The parties did not schedule another meeting at that time as the Employer did not know how long it would take to get the health care information Lippart had requested.

On July 26, the Employer's broker Hoggay telephoned Lippart at the request of Waltz who told him that Lippart had some questions about the Great West plan. Lippart told Hoggay that he wanted a copy of the plan documents, including a summary plan description and a provider list. Hoggay said he would get the information to Lippart as soon as he could and sent him the provider list by email the following day. His email stated: "I know we owe you some additional information and we are working on getting that over to you as soon as possible."

The parties met again on August 2. Lippart stated that he had not received the health care information he was expecting. It appears that some information had arrived at Lippart's office on August 1 but he had not been to that office to receive it. Thomas told Lippart that it was important for the company to have the bargaining unit employees in the Great West plan and gave him a booklet entitled "Employee Benefits Proposal for: Day Automotive" to review. While the Union committee was reviewing the booklet Prince came in with a revised "benefits grid" and said that the one in the booklet was incorrect. They took some time to look at the information provided and thereafter Lippart informed Thomas that they were not interested in changing plans as the proposed plan provided less coverage and cost the employees more. Lippart said that the Employer was asking the Union to make a "major concession" by moving to the Great West plan and he wanted to see some financial information to support it. Thomas responded that the unit employees' contribution rate of 70 cents an hour for healthcare was not meaningful and that the company had to have them in the plan it was proposing at the contribution rate specified. Thomas stated that it was an essential objective of the Employer that all employees, from the owner on down, be in the same plan and that it would not move from that position.

Lippart testified that he told Thomas that while the booklet was "helpful," it was not nearly what he needed. He said that he wanted a summary plan description or a copy of the plan document. The response was that it would be provided when it was available. Thomas, on the other hand, testified that Lippart stated that the Union was not interested in the proposed plan because the benefits were less and the cost was more and that Lippart did not request any additional information after stating his position. According to Thomas, Lippart stated: "The only way you are going to get us into that plan is to lock us out." Lippart testified that what he said was that if Thomas was saying that health care was nonnegotiable then the Employer should be prepared to lock out the unit employees as they were prepared to bargain about coverage and costs but not to accept the proposal. Lippart's bargaining notes support his version of what was said. Thomas said that he thought the parties were nearing a "stalemate" and suggested that they bring in a mediator and that they move their meetings away from the dealership, to which Lippart agreed.

The next meeting was on August 8 at a Holiday Inn in Uniontown with a federal mediator present, who first met with the parties separately and then got them together. The mediator told the Union that the Employer might be willing to offer a wage increase of $1.30 over a 3-year period if the Union would agree to its health care proposal. Lippart responded that the increase would not even cover the possible increases in the cost of coverage under the Great West plan being proposed and that while the Employer wanted them to pay two-thirds of the cost of health insurance, the cost beyond the first year could not even be calculated at that point. After a lunch break, the Union presented a written proposal which called for continued BC/BS coverage, since only one unit employee had a doctor in the Great West network, and the employees would increase their premium contribution from 70 cents an hour to $1.00. Thomas responded that the Employer's proposal remained the Great West plan and if there was a problem with the participating doctors they would try and correct it. Thomas gave the Union a letter giving 48-hour notice of termination of the extension agreement.

The next meeting was on August 17 at the Holiday Inn with a different mediator present. The Union made another contract proposal including an offer to increase the employees' health care contributions to $1.10 in the second and $1.15 in the third year of the agreement. The Employer responded to some of the Union's proposal and after lunch presented another proposal which included its first wage proposal. It also maintained the Great West health care plan which Thomas stated was "a must" and elimination of the 40-hour guarantee. The Employer's wage proposal called for a $1.00 an hour increase in the first year and a total of another $1.00 an hour over the remaining 4 years. According to Thomas, the amount of the increase in the first year was significantly greater than in any previous agreement and was intended to make a "profound statement" to the Union that would generate productive discussion about its health care proposal that the Union had rejected. When Lippart pointed out that the Employer's numbers with respect to the cost of health care did not appear to equal the two-thirds of the cost that the proposal called for, the Employer gave the Union a corrected grid with new cost information. The Union countered with an offer to increase the employees' contribution in the third year to $1.20. It also modified its wage proposal. Thomas said that they had emphasized throughout the negotiations that the Great West plan was the only option and that was not going to change today, next month or next year. Lippart responded that, as he told them before, the Employer would have to lock the employees out to get that plan. Thomas responded that it had made its last, best, and final offer. Thomas stated that the parties were at impasse which Lippart denied.

After the August 17 meeting, the bargaining unit employees

voted to reject the Employer's last, best, and final offer. Lippart sent Thomas a letter, dated August 22, informing him of the vote and offering to continue bargaining. Thomas responded by letter, dated August 24, stating that the parties appeared to be at impasse and that the Employer would implement its last, best, and final offer on August 31. Lippart responded by letter, dated August 30, denying that there was an impasse and offering to meet on August 31.

The parties met on August 31 with a mediator present. Lippart asked how Thomas could say they were at impasse and Thomas responded that the Union had taken the immovable position that the only way it could accomplish its goal of moving the bargaining unit employees to the Great West health care plan was to lock them out. Lippart responded that they were not at impasse and presented a new proposal that offered to accept a Great West plan that contained coverage similar to that in the interim plan and offering to increase the employees' premium contributions. Thomas said that the Employer was offering a health care plan with a menu of benefits and that if the benefits were changed then it was a different plan. The Employer was not going to change the plan, so they were at impasse.

Following the meeting the employees again voted to reject the Employer's last, best, and final offer and it was implemented at 11:59 p.m. that night.

Analysis and Conclusions

A. Alleged Undue Delay in Commencing Bargaining

The consolidated complaint alleges that the Respondent violated Section 8(a)(5) and (1) of the Act by unduly delaying the start of negotiations for a successor to the collective-bargaining agreement that was to expire on June 30. The Union first contacted the Respondent about its desire to commence bargaining by letter dated March 18. The Respondent's attorney Beamer responded by letter dated April 22 in which he stated that he was prepared to schedule a meeting within 15 days. A few days later Lippart called Beamer, with whom he had previously dealt on some grievance matters to schedule some dates. Beamer said that he was meeting with the Employer to prepare a proposal and he would get back to him with dates. Beamer confirmed this in a letter dated May 11 and asked if Lippart wanted to submit anything. By letter dated May 19, Lippart proposed meeting on May 24, 25, 26, or 31. Lippart's letter to Beamer was returned by the post office and he then faxed a copy to Beamer on May 28. Although, Lippart testified that Beamer had changed his address and the letter was not forwarded, it appears that the letter was incorrectly addressed to "1330 Grant Building" rather than "3310 Grant Building" which is on Beamer's letterhead. In the meantime, the Respondent had engaged Thomas as its representative for these negotiations and when Thomas tried to contact Lippart in mid-June, he was on vacation. They eventually made contact and agreed to meet on June 30.

It is true that the Board has emphasized the importance of a party's obligation to make expeditious and prompt arrangements to meet and bargain and that undue delay may sometimes serve to stifle agreement. E.g., *Lancaster Nissan*, 344 NLRB No. 7 (2005); *Calex Corp*., 322 NLRB 977 (1996). However, I find the evidence fails to establish that the Respondent engaged in any purposeful delay in commencing negotiations or that it was solely responsible for the fact that the first bargaining session was not held until more than 3 months after the Union's initial request for bargaining. I also find no evidence that it sought to gain an advantage or undermine the Union by failing to meet before June 30. Both sides appear to have been somewhat lackadaisical in their approach to setting up their first meeting. The parties have had a long relationship and Lippart and Beamer appear to have gotten along well. The delay in actually getting together was due in part to one of Lippart's letters being addressed incorrectly and his unavailability once Thomas took over bargaining responsibility from Beamer and tried to schedule a meeting. Although bargaining did not start until the date the existing agreement was to expire, the Respondent readily agreed to extending that agreement while bargaining was conducted. I find no evidence of bad faith on the Respondent's part and shall recommend that this allegation be dismissed.

B. Alleged Unilateral Implementation of New Health Care Plan

The expiring collective-bargaining agreement provided health care coverage for unit employees under a Highmark BC/BS plan. On June 30, when the parties agreed to extend the agreement during bargaining, the Respondent represented that the BC/BS coverage would also be extended. After the bargaining session ended and Lippart had left the premises, the Respondent learned that Highmark, which no longer provided the health care plan covering the Respondent's nearly 500 nonunion employees, would not extend BC/BS on an interim basis for the 14 unit employees. However, within hours the Respondent was able to secure a plan from its new provider Great West that would provide the same benefits as the BC/BS plan and it undertook to pay any additional costs involved. Consequently, under this interim plan the employees' coverage and premium costs remained the same.[5] The only effect of the change of the identity of the carrier on unit employees was that those who wanted coverage had to fill out a Great West application on June 30. It is undisputed that the Respondent did not give the Union notice or an opportunity to bargain before the interim plan was implemented.

Generally, when parties are engaged in contract negotiations, an employer has an obligation to refrain from making unilateral changes in unit employees' terms and conditions of employment absent overall impasse on bargaining for the agreement as a whole. E.g., *FKW, Inc.,* 321 NLRB 93, 94 (1996); *Bottom Line Enterprises*, 302 NLRB 373, 374 (1991). The Respondent makes several different arguments in support of its position that putting the interim plan into effect on June 30 did not violate the Act. The one that I find is dispositive is that this unilateral change did not amount to a "material, substantial and significant change" in the terms and conditions of employment of the bargaining unit employees and therefore did not violate Section 8(a)(5). *Mitchellace, Inc.,* 321 NLRB 191, 193 (1996). There is

[5] Although counsel for the General Counsel appears to question whether the interim plan was comparable to the BC/BS coverage previously in effect, there is no evidence that it was not.

no evidence that there was any significant difference in the administration, the benefits provided, or the cost to employees under the interim plan as opposed to the Highmark BC/BS plan. The evidence shows that the Respondent requested that Highmark continue the unit employees' BC/BS coverage pending negotiations and that it refused to do so. In a matter of hours after learning this, it made arrangements to provide comparable coverage at the same cost to the employees with any additional costs being paid by the Respondent. I find that the General Counsel has failed to establish that the change in insurance carriers vitally affected the terms and conditions of employment of unit employees. Consequently, I conclude that this unilateral change did not violate Sections 8(a)(5) or 8(d) of the Act. *Keystone Consolidated Industries*, 237 NLRB 763, 767 (1978).

C. Alleged Failure to Provide Information

The complaint alleges that the Respondent violated Section 8(a)(5) and (1) by failing to provide information necessary for collective bargaining. From the outset of negotiations the Respondent made it clear it would insist on the bargaining unit employees moving to the Great West health care plan that it was providing for all of its other employees. There can be no doubt that the Union was entitled to request and receive information that was relevant and necessary for it to carry out its responsibilities in representing the bargaining unit employees. *NLRB v. Acme Industrial Co.,* 385 U.S.432, 435–436 (1967). This includes information relevant to contract negotiations. E.g., *Newcor Bay City Division*, 345 NLRB 1229, 1237 (2005); *Public Service Electric & Gas Co.,* 323 NLRB 1182, 1186 ((1997). The Board uses a broad discovery type standard in determining what is relevant. *Shoppers Food Warehouse,* 315 NLRB 258, 259 (1994). There is no dispute that the Union requested information relevant to the health care plan the Respondent was proposing. The issue is whether the Respondent provided that information.

The General Counsel contends that the Respondent never provided the plan documents and the summary plan description that the Union requested relating to the Great West plan; consequently, it could not intelligently analyze, evaluate, or respond to the Respondent's health care proposal. The Respondent contends that it made a good faith effort to provide the Union with the information it requested and that, after the August 2 negotiating session during which the Union committee went over the information the Respondent provided and rejected the Great West plan, the Union never asked for more information or indicated that it did not have all of the information it needed.

At the meeting on July 7, the Employer proposed moving to the Great West health care plan. Lippart asked for "copies of the plan and what it cost." At the meeting on July 13, the Employer gave the Union a "grid" showing a summary of benefits under the proposed Great West plan and one comparing the premium cost under that plan with the cost of the expired Highmark BC/BS plan and what it would cost if it were renewed. The employees were expected to pay two-thirds of the premium cost. Lippart testified that these documents did not provide the information he needed because they did not have "any details of the coverages." He said he could not bargain a new health plan without knowing what the plan is and asked for "a plan document . . . that outlines all the coverages, and the exceptions, and how the plan works." Lippart was told he could look at the Great West website and could contact its broker Hoggay. In fact, Hoggay contacted Lippart on July 26. During their phone conversation, Lippart told Hoggay the kind of information he wanted—the plan document or what Hoggay referred to as the contract. Hoggay said that the contract normally was not prepared until the coverage went into effect. Lippart responded that he wanted a summary plan description and a provider list and Hoggay said he would get the information to Lippart as soon as he could. The following day Lippart got the list of providers in an email in which Hoggay stated, "I know we owe you some additional information and we are working on getting that over to you as soon as possible." It also gave Hoggay's phone number and said that Lippart should feel free to call him with any questions.

At the meeting on August 2, the union committee was given the Great West health plan booklet and took a recess to review it. While doing so, they were given a corrected benefits grid. Lippart testified that his committee found "some areas in the plan that we weren't comfortable with and when the parties reconvened he told the Employer they "weren't interested in changing plans" and that they thought the BC/BS plan would probably be cheaper. Lippart says he also asked for additional information at that meeting, which Thomas denies. I credit Thomas as there is no indication in the bargaining notes of either that Lippart asked for more information. On the contrary, Lippart's notes refer to several areas of the Great West plan with which he has problems, including higher premiums, copays, and deductibles than the previous health plan, but there is no indication that he lacks enough information to be able to properly evaluate it. There is no evidence that at any time thereafter the Union requested additional information about the Great West plan the Employer was insisting on or said that what had been provided was insufficient. At the hearing, Lippart testified that since the Employer had never refused to provide information, he felt it was unnecessary to repeat his requests or to put them in writing as he might have done if the Respondent had refused to provide information.

There is no dispute that Lippart had requested a plan document and a summary plan description and that he did not receive either before the Respondent implemented its final contract offer. Does this mean that the Respondent violated the Act by not providing those specific items or the Union lacked sufficient information to evaluate the Respondent's health care proposal? I find that it does not. First, the evidence shows that a correct version of the summary plan description for the health care plan applicable to the Day employees was not provided by Great West until November. More important, I find that the evidence establishes that the Respondent made a good faith effort to provide the Union with the relevant information it needed to evaluate the Employer's health care proposal and that, using an objective standard, the information it provided met its obligation to do so.

Both Hoggay and Britt Hayes are insurance professionals with considerable experience and knowledge in the field of

employee health care benefit plans.[6] Their credible testimony establishes that the information that is essential and normally provided to explain and enable customers to evaluate such plans involves rates and plan design, specifying, what is covered under the plan such as deductibles, copayments, out-of-pocket maximums, etc. It also establishes that in the insurance industry such information is normally contained in a "benefit grid" which is presented to the employer to evaluate the plan before it is purchased and to its employee beneficiaries to understand what is available to them in the plan. It is from the benefit grid that the summary plan description is prepared. Hoggay described it as "similar to . . . a benefit grid, but maybe in a little more legalese." The more detailed summary plan description is normally not even prepared until some time after the plan goes into effect and may not be available until a month or more later. Here, the Union was given a benefits grid outlining the premium costs and the benefits provided under the Great West plan the Respondent was proposing, which apparently provided enough information for the Union to make a number of counterproposals on health care.

The evidence shows that the Respondent gave the Union what information it had with respect to the Great West plan. It cannot be expected to provide information it does not have. *Kathleen's Bakeshop, LLC,* 337 NLRB 1081, 1082 (2002). Under these circumstances, where the Respondent had provided information it had every reason to believe satisfied the Union's requests, where the Union gave no indication that it needed or was expecting more information, where it neither renewed its information requests nor identified areas about which it needed more detail or asked that specific questions be addressed, and where it continued to reject the Respondent's health care proposal as costing more and providing less, I conclude that the Respondent did not fail or refuse to provide relevant information in violation of Section 8(a)(5) and (1).

D. Alleged Refusal to Bargain Until the Union Accepted the Respondent's Health Care Proposal

The complaint alleges that the Respondent violated Section 8(a)(5) and (1) by insisting that the Union agree to its proposal regarding health benefits available to the bargaining unit. It is undisputed that from the outset the Respondent insisted that the bargaining unit employees move to the Great West health care plan it was providing to its nonunion employees. The evidence shows that the Respondent was adamant that it would not consider any changes in benefits or employee contributions. Its only stated reason for insisting on this plan was that a single plan for all employees, union and nonunion, was more administratively convenient and that what the bargaining unit employees had been paying for health care didn't come close to being a meaningful contribution. Under Section 8(d) the obligation to bargain collectively does not compel either party to agree to a proposal or to make a concession where its position on an issue is genuinely and sincerely held. *CJC Holdings,* 320 NLRB 1041, 1046 (1996). However, here, the Respondent made no wage offer and Thomas told Lippart it would not discuss economics until the Union agreed to its health care proposal. Prior to August 17, the Respondent had insisted on its health care plan and proposed eliminating the 40-hour guarantee, both of which could be expected to have a significant impact on the unit employees. But in the area of wages all it had done was to float through the federal mediator the possibility that it might be willing to offer a $1.30 hourly wage increase over 3 years if the Union accepted its health care proposal. On August 17 in its last, best, and final offer the Respondent for the first made a wage proposal similar to that it had previously floated but totaling $2.00 over 5 years.

In *Patrick & Co.,* 248 NLRB 390 (1980), the employer insisted that the Union accede to its position on wages before there could be any negotiations on other issues. The Board concluded that its conduct obstructed the bargaining process by preventing the Union from exploring its position on any of the economic and noneconomic issues other than wages thereby reducing the likelihood of reaching agreement on a full contract. That is similar to what the Respondent did here. It made a proposal which it insisted was a must and refused to discuss other economic issues unless the Union accepted its health care proposal notwithstanding the fact that the economic impact on the unit employees was substantial and imposed a significant increase in employee premium contributions. I find that evidence establishes that the Respondent unlawfully conditioned meaningful bargaining on the Union's acceptance of its health care proposal. Thomas testified that the Respondent's position during the negotiations was that the parties "can discuss everything else and have flexibility in all other areas in these negotiations but for moving the bargaining unit employees into the bigger Day plan." However, in actuality he demonstrated no flexibility, insisting that the health plan be in place as proposed, and his refusal to discuss other economic proposals until the Union caved on health care served to stultify the bargaining process. On August 17, the Respondent finally made a wage proposal, which over 5 years would result in an hourly wage increase that would barely meet the increase in the amount in the unit employees' hourly premium costs for the Great West plan in the first year alone. A couple of hours later designated this as its final offer when the Union countered to increase its offer with respect to the amount the employees' hourly premium contribution. I find that the Respondent actions conditioned meaningful bargaining on acceptance of its health care proposal and violated Section 8(a)(5) and (1).

E. Alleged Unlawful Implementation of Respondent's Final Offer

The primary issue in this matter is whether the Respondent violated Section 8(a)(5) and (1) by implementing its final contract offer before the parties had reached impasse. The General Counsel argues that there could not have been an impasse on August 31 because the Respondent had not bargained in good faith and had committed unfair labor practices which precluded reaching an impasse.

Section 8(a)(5) prohibits an employer from unilaterally instituting changes regarding wages, hours, and other terms and conditions of employment before reaching a good faith impasse in bargaining. *NLRB v. Katz,* 369 U.S. 736 (1962); *Milwaukee*

[6] While I recognize that both Hoggay and Hayes have a business relationship with the Respondent, I found both to be credible.

Spring Division, 268 NLRB 601, 602 (1984). An impasse is considered to exist when the collective-bargaining process has been exhausted, *D.C. Liquor Wholesalers*, 292 NLRB 1234 (1989), and "despite the parties best efforts to reach an agreement neither party is willing to move from its position." *Excavation-Construction,* 248 NLRB 649, 650 (1980); *Hi-Way Billboards, Inc.,* 206 NLRB 22 (1973). The burden of establishing the existence of an impasse is on the party asserting it as the basis for its unilateral actions. *Tom Ryan Distributors,* 314 NLRB 600, 604 (1994); *North Star Steel,* 305 NLRB 45 (1991). The relevant factors to be considered in determining whether a bargaining impasse exists were set forth by the Board in *Taft Broadcasting Co.,* 163 NLRB 475, 476 (1967):

> Whether a bargaining impasse exists is a matter of judgment. The bargaining history, the good faith of the parties in negotiations, the length of the negotiations, the importance of the issues to which there is disagreement, the contemporaneous understanding of the parties as to the state of negotiations are all factors to be considered in deciding whether an impasse existed.

1. Bargaining history

While the Union had represented the bargaining unit employees for many years, neither of the principal negotiators had any significant history with the parties' prior negotiations nor familiarity with each other. The two primary issues that divided the parties, heath care and the 40-hour guarantee, had been in many prior contracts and the Respondent's proposals on these subjects represented a radical departure from previous agreements. The substantial concessions the Respondent was seeking in these negotiations warranted more extensive discussion than was involved here. *Harding Glass Co.,* 316 NLRB 985, 991 (1995).

2. Good faith

Although the Respondent has pointed to several things that indicated good faith on its part in the negotiations, I do not consider them dispositive on this issue. It appears that the Respondent was truly interested in reaching a new contract with the Union, but it was interested in doing so only on its terms. I have found that it violated Section 8(a)(5) by conditioning meaningful negotiations on economic issues on acceptance of its health care proposal. This precludes a finding that it negotiated in good faith.

3. Length of negotiations and importance of issues

While I found that the Respondent did not intentionally or unlawfully delay the start of negotiations, once they commenced it spent little time in getting them over with. There were a total of seven meetings before the Respondent implemented it last offer. The first on June 30 involved little in the way of substance beyond extending the expiring agreement and the last on August 31 involved little more than a discussion of whether they were at impasse. Much of the meeting on July 13 and on August 2 involved the Union's attempt to get access to and understand the health care plan on which the Respondent was insisting but about which it seemed to have little detailed or correct information. However, by the fourth meeting on August 2, Thomas was already talking about a "stalemate." As noted, the Respondent did not present a wage proposal until late in the session on August 17 and shortly thereafter designated it as its last, best, and final offer. At the next meeting the Respondent declared impasse and implemented its final offer.

There can be no doubt about the importance of the health plan issue and elimination of the 40-hour guarantee. While the Union continued to try to negotiate on the nature, rates, and coverage of the plan, the Respondent refused to negotiate on any of them. While it claimed to be flexible and willing to trade off in other areas, it did not make a wage offer until its one, only, and final offer on August 17. I find that the evidence fails to establish that the parties had the opportunity to fully explore the economic issues that divided them. There was little, if any, discussion of the Respondent's reasons for the elimination of the 40-hour guarantee except for its apparent belief that it was "a disincentive" to employees exercising maximum productivity and none with respect to the economic impact it would have on unit employees.

Although it clearly preferred to keep the BC/BS coverage the employees had for so long, by August 31, the Union had offered to accept Great West as the insurance carrier although it still rejected the specific plan the Respondent was proposing seeking something similar to the interim plan but with higher employee premium contributions. Thomas would not discuss the Union's proposal. It appears during the negotiations that one of the few things that Lippart said that Thomas listened to was his comment about the Employer having to lock the employees out to get them into the Great West health plan. It appears that the Respondent seized on those comments as justification for declaring an impasse and ignored the Union's continuing efforts to find common ground. Although the Respondent asserts that the importance of the health care issue and the positions of the parties were such that an impasse existed after only a few bargaining sessions, I do not agree. On the contrary, given the significance of the issues that divided the parties and the radical changes the Respondent was seeking, more than a few meeting could be expected to be needed. "While it is true that the number of negotiating sessions is not controlling, generally, the more meetings, the better the chance of finding an impasse." *PRC Recording Co.,* 280 NLRB 615, 635 (1986). That would appear to be the case here.

I don't believe that the Respondent has shown that when it declared impasse that the parties had reached the point where further negotiations would have been futile. "An impasse is not demonstrated simply when one party's concessions are not thought to be adequate or when frustration in the movement has reached a subjectively intolerable level." *AMF Bowling Co. v. NLRB*, 63 F.3d 1293, 1301 (4th Cir. 1995). For an impasse to occur, neither party must be willing to compromise. While the Respondent showed intransigence from the start, the Union continued to modify its proposals. Again, rather than responding to the Union's actions the Respondent chose to fixate on Lippart's "lock out" comments. It also chose to draw an arbitrary line as to when negotiations should end rather than letting them run the course, although it has articulated no compelling reasons for doing so. Its assumptions as to what the Union would or would not do are not an adequate substitute for collective bargaining. *Excavation-Construction, Inc.,* above, at 650.

4. Contemporaneous views of the parties

The Respondent's view that an impasse had been reached is not determinative. *Wykoff Steel,* 303 NLRB 517, 523 (1991). On August 31, Lippart did not share that view, he told the Respondent he did not, and presented a modified proposal which the Respondent refused to consider.

Based on the foregoing, I find that the Respondent has not shown that negotiated in good faith, that the parties had exhausted the possibility of reaching an agreement, that neither party was willing to compromise further, or that it was warranted in assuming that further bargaining would be futile. Since the parties had not reached a genuine impasse at the time it refused to continue contract negotiations on and after August 31 when it implemented its final offer, the Respondent violated Section 8(a)(5) and (1) of the Act. E.g., *Harding Glass Co.,* above; *D.C. Liquor Wholesalers,* above.

CONCLUSIONS OF LAW

1. The Respondent, Day Automotive Resources, Inc. d/b/a Day Automotive Group and Centennial Chevrolet, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. At all times material, the Union has been the exclusive representative of all auto mechanics and body shop technicians employed by the Respondent at Centennial Chevrolet for purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment within the meaning of Section 9(a) of the Act.
4. The Respondent violated Section 8(a)(5) and (1) of the Act by conditioning negotiations for a new collective-bargaining agreement on acceptance by the Union of its proposal concerning health care coverage.
5. The Respondent violated Section 8(a)(5) and (1) of the Act by on and after August 31, 2005, refusing to meet and bargain with the Union and unilaterally changing the terms and conditions of employment by implementing its final contract offer when there was no impasse in bargaining.
6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.
7. The Respondent did not engage in unfair labor practices alleged in the consolidated complaint not specifically found herein.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent violated Section 8(a)(5) and (1) of the Act by unlawfully implementing the terms of its last contract offer in the absence of a lawful impasse, I shall recommend that it be ordered to restore the terms and conditions of employment of unit employees as they existed prior to August 31, 2005, continue them in effect until the parties reach an agreement or a lawful impasse, and make whole all employees for any losses they may have suffered as a result of its unlawful conduct, computed as prescribed in *Ogle Protection Service,* 183 NLRB 682 (1970), with interest computed as prescribed in *New Horizons for the Retarded,* 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[7]

ORDER

The Respondent, Day Automotive Resources, Inc. d/b/a Day Automotive Group and Centennial Chevrolet, Inc., its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment by conditioning negotiations for a collective-bargaining agreement on the Union's acceptance of its proposal for a new health care plan.

(b) Unilaterally changing terms and conditions of employment by implementing its last contract offer prior to reaching a good-faith impasse in bargaining.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

(b) On request of the Union, restore to unit employees the terms and conditions of employment that were applicable prior to August 31, 2005, and continue them in effect until the parties either reach an agreement or a good-faith impasse in bargaining and make them whole for any losses suffered by reason of the unilateral changes in terms and conditions of employment, on and after August 31, 2005, plus interest.

(c) Within 14 days after service by the Region, post at its facility in Uniontown, Pennsylvania, copies of the attached notice marked "Appendix."[8] Copies of the notice, on forms provided by the Regional Director for Region 6, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of

[7] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[8] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 30, 2005.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.